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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,082	12/02/2003	Joseph R. Moody	D-7638	2721
44885	7590	01/03/2006	EXAMINER	
ARTHUR G. YEAGER, P.A. 245-1 EAST ADAMS STREET JACKSONVILLE, FL 32202-3336			CLEMENT, MICHELLE RENEE	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,082	Applicant(s) MOODY ET AL.	
	Examiner Michelle (Shelley) Clement	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 24-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 24-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/14/05 have been fully considered but they are not persuasive. With respect to applicant's arguments regarding the Garand reference, it is noted that applicant's claimed "substantially completely" is not defined by the specification and one of ordinary skill in the art would not be able to determine what portion of the legs being positioned within the recess would constitute *substantially completely* positionable and housed within the recess. The legs of the Garand reference are positionable within the recess, given that *substantially completely* has no ascertainable meaning; it is the examiner's position that the legs of Garand are *substantially completely* positionable within the recess. In regards to applicants assertions concerning the Stephens and Clyde references it is noted that the structures being freestanding is irrelevant, Stephens discloses that the device may have two legs (i.e. a bipod); Stephens discloses the claimed device it is irrelevant that the intended use of Stephens is different than the intended use of the applicant. The recitation a fore grip mountable to a firearm has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Where the written description only implicitly or inherently sets forth the structure, materials, or acts corresponding to a means-plus-function, applicant must clarify the disclosure to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, or acts perform the function recited in the claim elements and equivalents thereof. (See MPEP 2181). Correction of the following is required: applicant must clarify the disclosure to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, or acts perform the mounting means, movable means, release means, hinge means, stop means, and means for spreading recited in the claim elements and equivalents thereof. The amendment filed 10/14/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: mounting means, movable means, release means, hinge means, stop means, and means for spreading.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

3. Claims 1 and 24-45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

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claimed invention. The mounting means, movable means, release means, hinge means, stop means, and means for spreading were not described in the specification at the time the application was filed.

4. Claims 1 and 24-45 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, it is not clear to the examiner what constitutes "substantially completely", the term is not defined in the specification and one of ordinary skill in the art would not be apprised of what is intended to be encompassed by the terms.

5. Regarding claim 1 and 24-45, applicant has made an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since applicant has not properly applied the means plus function steps it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 27, 29, 31, 33, 34, 38, 40, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Garand (US Patent # 2,489,283). Garand discloses a grip which can be mounted to a firearm to stabilize the firearm, the grip comprising a an elongate handle having an upper end portion and a lower end portion and an internal tubular recess extending between the upper

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and lower end portions of the handle, a mounting assembly affixed to the upper end portion of the handle for attaching the handle to a firearm, a bipod including a pair of elongate legs, each leg having an upper end portion and a lower end portion, each leg sized in length to be substantially completely selectively positionable and housed within the recess, a mechanism located within the recess and attached to the upper end portion of each leg operable to move the bipod from a stored position to a deployed position and a release mechanism for engaging the movable mechanism for securing the bipod in the stored position and a mechanism for limiting downward travel of the movable mechanism. The grip has a mechanism for spreading the legs apart when the legs are deployed. Each leg includes a foot with a fixed thickness.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 24-31, and 33-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens (US Patent # 575,529) and Clyde (US Patent # 721,425). Stephens discloses a support device which can comprise two or three legs, the device comprising means for attachment (reference a) to a item needing support, the means is a mounting assembly (reference C) coupled to a grip portion (reference S) and is removably coupled to the item needing support (Figure 1); the plurality of legs are hingably coupled to a deployment mechanism and are provided with integral feet of a fixed thickness; means for spreading the legs into a locked position upon deployment from the grip portion comprising a spring mechanism (reference N); the deployment

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mechanism comprising a spring (reference N) and piston assembly (reference T) and a catch (reference v) attached to the piston assembly; a tubular recess (Figures 6 & 7) positioned within the grip portion for storage of the deployment mechanism and the plurality of legs; a release mechanism; and means for retaining the deployment mechanism comprising a retention ring (reference m) attached to the base of the grip; and means for prevention of rotation of the deployment mechanism upon activation of the release mechanism (references v & s). Although Stephens does not expressly disclose the means for spreading the legs into a locked position upon deployment from the grip portion comprising a spring mechanism positioned between the legs or the release mechanism comprising a spring release mechanism, Clyde does. Clyde teaches an adjustable support comprising a plurality of legs deployed from within a recess of a grip wherein the means for spreading the legs into a locked position upon deployment comprises a spring mechanism (reference 17) positioned between the legs and the release mechanism comprising a spring release mechanism (references 9, 10) positioned within the grip interfacing with a catch (reference 12 & 13). Stephens and Clyde are analogous art because they are from similar problem solving areas: multi-leg supports. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the spreading means and release mechanism as taught by Clyde with the support as taught by Stephens. The suggestion/motivation for doing so would have been to obtain a support that could be quickly deployed. Although Stephens does not expressly disclose the support for mounting to a firearm for stabilizing a firearm, it is noted that the support of Stephens could be used for mounting to a firearm and could be used for stabilizing the firearm. It is further noted that the [a] statements of intended use or field of use, b) "adapted to" or "adapted for" clauses, c) "wherein" clauses, or d)

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"whereby"] clauses are essentially method limitations or statements of intended or desired use.

Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Stephens and Clyde disclose the claimed invention except for the tubular recess within the grip portion having the protrusion and the piston be provided with the recess that interfaces with the protrusion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the protrusion and recess, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

9. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens and Clyde as applied to claim 42 above, and further in view of Kopman et al. (US Patent # 6,487,807). Although neither Stephens nor Clyde expressly disclose the grip provided with a plurality of annular grooves extending around the circumference of the grip, Kopman et al. does.

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Kopman et al. teaches a multi-leg support device having a plurality of annular grooves extending around the circumference of the grip (Figure 3). Kopman et al., Stephens and Clyde are analogous art because they are from similar problem solving areas: multi-leg supports. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the grooves as taught by Kopman et al. with the support of Stephens and Clyde. The suggestion/motivation for doing so would have been to obtain a support that was lighter weight because it had less material.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Teetzel et al. (US Patent Application Publication 2005/0241206).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "M Clement", with a long horizontal flourish extending to the right.